IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

Crl.MC.No. 365 of 2007()

CRA.415/2005 of SESSIONS COURT, MANJERI
MC.85/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR

.....

PETITIONERS:

---

1. NAZERR, S/O. HASSAN,
KEERRARIMALAYIL HOUSE,
ATHANI, KAKKANAD,
KANAYANNOOR TALUK,
ERNAKULAM.

2. M.A. MOHAMMED, S/O. ALIYAR,
MOLATH HOUSE,
AMBADIMOOLA,
KAKKANAD,
KANAYANNOOR TALUK,
ERNAKULAM.

BY ADV. SRI.KRISHNADAS P. NAIR
SRI.HARIDAS P.NAIR
SMT.K.L.SREEKALA

RESPONDENTS:

STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 365 OF 2007

Dated this the 14th day of February, 2007

ORDER

The petitioners are the sureties of an accused who faced indictment for the offence punishable under Sec.420 of the IPC. The accused was released on bail on condition that he executes a bond for Rs.5,000/- with two sureties and accordingly, on the bond executed by the petitioners, the accused was released on bail. He started absconding and proceedings under Sec.446 of the Cr.P.C. were initiated against the petitioners. They were directed to pay penalty of Rs.4,000/- each. At the stage of appeal, it was brought to the notice of the learned appellate Judge that the accused were produced subsequently and he has been acquitted after trial. In these circumstances, the petitioners pleaded for leniency and the appellate court reduced the amount of penalty from Rs.4,000/- to Rs.2,500/- each.

2. The short submission made by the learned counsel for the petitioners is that sufficient leniency has not been

shown to the petitioners. They had ensured that the accused was available for trial though only after the original order under Sec.446 of the Cr.P.C. was passed. In these circumstances, maximum leniency may be shown to the petitioners, it is prayed.

3. In the facts and circumstances of this case, the presence of the accused person having been made available to the court subsequently and he having been acquitted after trial, as indicated in the appellate judgment, I am satisfied that indulgence can be shown to the petitioners. Of course, the inability of the petitioners to secure the presence of the accused promptly has led to the delay in the disposal of the case and I am, in these circumstances, satisfied that absolution from liability cannot be claimed by the petitioners. Leniency can, of course, be shown.

4. In the result, this Crl.M.C. is allowed in part. The amount of penalty imposed by the appellate court in modification of the order of the trial court is further reduced from Rs.2,500/- to Rs.1,500/- each.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy// P.S. To Judge